



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105-3901

January 8, 2010

Walter C. Waidehlich, Jr.
Division Administrator
Federal Highway Administration
650 Capitol Mall, Suite 4-100
Sacramento, CA 95814

Subject: Final Tier 1 Environmental Impact Statement/Environmental Impact Report
for the Placer Parkway Corridor Preservation Project (CEQ #20090409)

Dear Mr. Waidehlich:

The U.S. Environmental Protection Agency (EPA) has reviewed the above-referenced document pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508) and Section 309 of the Clean Air Act.

Interagency coordination for the Placer Parkway Corridor Preservation Project is being conducted in accordance with the National Environmental Policy Act/Clean Water Act Section 404 Integration Process Memorandum of Understanding (NEPA/404 MOU), as modified for Tier 1 projects, outlined in a letter from EPA to the Federal Highway Administration (FHWA) dated April 1, 2004 and formalized on April 12, 2004. Participating agencies in the NEPA/404 MOU process during the development of the Tier 1 Programmatic Draft Environmental Impact Statement (DEIS) included EPA, U.S. Army Corps of Engineers (Corps), U.S. Fish and Wildlife Service (USFWS), FHWA, the California Department of Transportation (Caltrans), and South Placer County Regional Transportation Authority (SPRTA). The goal of the modified NEPA/404 MOU process is to ensure that Tier 1 decisions reflect careful consideration of the Clean Water Act (CWA) Section 404 (b)(1) Guidelines, to eliminate the need to revisit decisions at the Tier 2 project-level analysis that might conflict with CWA Section 404 permit requirements.

Once the Tier 1 environmental review process is complete, FHWA, Caltrans, and SPRTA may initiate the Tier 2, project-level environmental review process. EPA will use the information collected during the Tier 1 process, specifically at the concurrence points, to guide Tier 2 project review.

Project History

EPA reviewed the DEIS and provided comments to FHWA on September 25, 2007. We rated the DEIS as Environmental Concerns-Insufficient Information (EC-2). EPA's major area of concern was the analysis of indirect (secondary) impacts of the Parkway, including potential growth-inducing impacts to aquatic resources, special status species, and biological habitat. We were concerned that the DEIS appeared to exclude from analysis the indirect impacts of the planned and potential additional interchanges, such as the Watt Avenue interchange, and did not demonstrate how the "no-development buffer concept" would be implemented to prevent additional interchanges on the Parkway and to prevent near roadway development.

We also reviewed the Draft Partially Revised Tier 1 Environmental Impact Statement/Environmental Impact Report (PRD) and provided comments on March 13, 2009. While the PRD included a more robust analysis of induced growth impacts, EPA disagreed with some of the analysis assumptions and conclusions, such as the extent of potential induced growth impacts of the alternatives and the exclusion of land within the 100-year floodplain from the analysis.

While the NEPA/404 agencies successfully completed the first three concurrence points in the modified Tier 1 NEPA/404 MOU, (Purpose and Need, Selection Criteria, and Range of Alternatives to be evaluated in the DEIS), EPA and the Corps did not concur with FHWA's June 24, 2008 request for concurrence that Alternative 5 is most likely to contain the LEDPA. At that time, informal dispute resolution was initiated as outlined in Appendix B of the 1994 NEPA/404 MOU. The dispute resolution process was initiated based on disagreement regarding impacts to aquatic resources. Specifically, EPA and the Corps were concerned that indirect impacts associated with Alternative 5 would result in greater impacts to aquatic resources (from habitat fragmentation and currently unplanned growth) than other alternatives considered in the Tier 1 environmental review process. We note that although USFWS was not a signatory to the modified NEPA/404 MOU, EPA and the Corps coordinated regularly with USFWS to ensure that all regulatory agency concerns were identified and addressed through this forum.

FHWA, Caltrans, SPRTA, EPA, the Corps, and USFWS subsequently participated in both informal and formal dispute resolution processes, which resulted in the development of a "no-access" buffer concept for the proposed corridor. This concept was discussed in the DEIS for the project, was further outlined during the dispute resolution process, and is formalized in the attached "Terms of a No-Access Easement for the Buffer Area Adjacent to Placer Parkway (August 5, 2009)" and map, "Alternative 5 – Corridor Most Likely to Contain the LEDPA (August 2009)."

Based on our interagency discussions and the attached documentation, EPA concurred with FHWA's assertion that Alternative 5 with a no-access buffer (in accordance with the attached terms) is the alternative most likely to contain the LEDPA. While EPA had expressed concerns about the methodology used to determine potential

induced growth impacts of each of the alternatives in the PRD, we agree that the “no-development buffer” would alleviate induced growth impacts of Alternative 5. The intent of the no-access buffer (as indicated in the attached correspondence and map) is to preclude access to the proposed parkway, either by interchanges or other means, in the central segment of the parkway. We believe that limiting access in this manner will limit the project’s induced growth impacts on aquatic resources. Should this project continue to Tier 2, project-level analysis, the no-access buffer concept must be included as a component of the project description for any future alignment in the Alternative 5 Corridor, as this concept is integral to our agencies’ determination of this corridor as being “most likely to contain the LEDPA.” If the no-access buffer concept is not included, other alternative alignments analyzed at the Tier 1 stage may need to be revisited at Tier 2.

EPA also concurred with the Mitigation Framework presented by FHWA in its September 3, 2009 correspondence. This framework will guide the conceptual mitigation plan prepared during the Tier 2 environmental review process and the final mitigation plan for the future project. EPA will be available to work with the NEPA/404 agencies to discuss future mitigation opportunities.

In addition to the induced growth issues discussed above, EPA has the following comments regarding other issues we raised in our comments on the DEIS.

Hydrology and Floodplains

In our DEIS comments, EPA stated our support for project elements such as bridges and spans that would avoid environmental impacts on local hydrology and floodplains. The DEIS stated that, “As necessary, bridges would be used to span certain features and improvements such as...floodplains.” (2.2.2) and that “[w]here creek crossings coincide with floodplain crossings, the road would be elevated on a bridge.” The DEIS also stated that “Culverts would be used at smaller creek crossings as appropriate depending on local conditions and permit requirements.” EPA recommended that the Tier 1 FEIS include commitments to use avoidance features such as bridges, spans, and arched or bottomless culverts. The FEIS Response to Comments states that additional analysis will be undertaken at the Tier 2 stage to evaluate potential impacts on hydrology and floodplains and that project design will include a range of strategies to reduce floodplain and hydrological impacts. It also states that these strategies would include avoidance and minimization measures, such as the use of bridges to span floodplains, and additional measures such as slope stabilization techniques, newer technology culverts, and bottomless or arched culverts will be evaluated further during Tier 2.

EPA encourages FHWA to commit to these measures and follow the recommendations below in the Tier 2 analysis.

Recommendations:

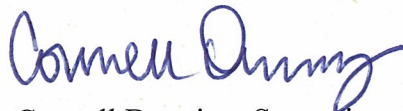
- Include in the Tier 2 DEIS a description of which floodplain areas would likely be spanned as part of the Placer Parkway project, including a map of the elevated structures over the floodplain and an estimate of elevated road distances.
- Include in the Tier 2 DEIS a commitment to use measures to avoid resource impacts. In particular, commit to the following:
 - Use newer technology culverts and less damaging culverts such as large bottomless or arched culverts.
 - Span floodplains and major creek crossings to avoid impacts to aquatic resources.
- Ensure consistency with the Executive Order 13112 on Invasive Species. Include a commitment to use native vegetation and to reuse native soils in re-vegetation.
- Stabilize slopes with native vegetation especially if segments of the roadway are built in waters of the U.S. Less steep slopes are preferred for long-term maintenance and reduction of potential future impacts to waters of the U.S.

Air Quality

Since our DEIS comment letter, the Sacramento area was designated as non-attainment for PM_{2.5}. Therefore, the Tier 2 DEIS should include the most recent monitoring data and assessment of potential PM_{2.5} impacts.

We appreciate the opportunity to review this FEIS. When the ROD is signed, please send one copy to the address above (mail code: CED-2). If you have any questions, please contact me (415-947-4161 or dunning.connell@epa.gov) or Carolyn Mulvihill (415-947-3554 or mulvihill.carolyn@epa.gov) of my staff, or Paul Jones of EPA's Wetlands Regulatory Office (415-972-3470 or jones.paul@epa.gov).

Sincerely,



Connell Dunning, Supervisor
Transportation Team, Environmental Review Office

cc: Celia McAdam, South Placer Regional Transportation Authority
Katrina Pierce, California Department of Transportation

Nancy Haley, U.S. Army Corps of Engineers
Ken Sanchez, U.S. Fish and Wildlife Service
John Baker, National Marine Fisheries Service
Jeff Finn, California Department of Fish and Game
Loren Clark, Placer County Planning Department
Mike McKeever, Sacramento Area Council of Governments

Attachments

1. EPA concurrence letter on Corridor Most Likely to Contain the LEDPA
2. Terms of a No-Access Easement for the Buffer Area Adjacent to Placer Parkway (August 5, 2009)
3. Map - Alternative 5 – Corridor Most Likely to Contain the LEDPA (August 2009)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

**75 Hawthorne Street
San Francisco, CA 94105-3901**

October 2, 2009

Walter C. Waidehch, Jr.
Division Administrator
Federal Highway Administration
650 Capitol Mall, Suite 4-100
Sacramento, CA 95814

Subject: Placer Parkway Corridor Preservation Project NEPA/404 Tier 1 Process
Response to Request for Concurrence on the Corridor Most Likely to Contain
the LEDPA and Mitigation Framework

Dear Mr. Waidehch:

The U.S. Environmental Protection Agency (EPA) has reviewed the Federal Highway Administration (FHWA) request for concurrence that Placer Parkway Corridor Alternative 5 (Alternative 5) is most likely to contain the Least Environmentally Damaging Practicable Alternative (LEDPA), and on the Mitigation Framework included in FHWA's September 3, 2009 correspondence.

Interagency coordination regarding the Placer Parkway Corridor Preservation Project is being conducted in accordance with the National Environmental Policy Act/Clean Water Act Section 404 Integration Process Memorandum of Understanding (NEPA/404 MOU), as modified for Tier 1 projects, outlined in a letter from EPA to FHWA dated April 1, 2004 and formalized on April 12, 2004. Participating agencies in the NEPA/404 MOU process during the development of the Tier 1 Programmatic Draft Environmental Impact Statement (DEIS) include EPA, U.S. Army Corps of Engineers (Corps), U.S. Fish and Wildlife Service (USFWS), FHWA, the California Department of Transportation (Caltrans), and South Placer County Regional Transportation Authority (SPRTA). The goal of the modified NEPA/404 MOU process is to ensure that Tier 1 decisions reflect careful consideration of the Clean Water Act (CWA) Section 404 (b)(1) Guidelines, to eliminate the need to revisit decisions at the Tier 2 project-level analysis that might conflict with CWA Section 404 permit requirements. Resolution of conflicts during the Tier 1 process will streamline the Tier 2 environmental review and permitting process.

While the agencies successfully completed the first three concurrence points in the modified Tier 1 NEPA/404 MOU, (Purpose and Need, Selection Criteria, and Range of Alternatives to be evaluated in the DEIS), EPA and the Corps did not concur with FHWA's June 24, 2008 request for concurrence that Alternative 5 is most likely to contain the LEDPA. At that time, informal dispute resolution was initiated as outlined in Appendix B of the 1994 NEPA/404 MOU. The dispute resolution process was initiated based on disagreement surrounding impacts to aquatic resources. Specifically, we were concerned that indirect impacts associated with Alternative 5 would result in greater impacts to aquatic resources (from habitat fragmentation and currently unplanned growth) than other alternatives considered in the Tier 1 environmental review process. We note that although USFWS was not a signatory to the modified NEPA/404 MOU, EPA and the Corps coordinated regularly with USFWS to ensure that all regulatory agency concerns were identified and addressed through this forum.

FHWA, Caltrans, SPRTA, EPA, the Corps, and USFWS subsequently participated in both informal and formal dispute resolution processes, which resulted in the development of a "no-access" buffer concept for the proposed corridor. This concept was discussed in the DEIS for the project, was further outlined during the dispute resolution process, and is formalized in the attached "Terms of a No-Access Easement for the Buffer Area Adjacent to Placer Parkway (August 5, 2009)" and map, "Alternative 5 – Corridor Most Likely to Contain the LEDPA (August 2009)." (See also attached summaries of agency correspondence on the "no-access" buffer concept and the minutes of the final dispute resolution meeting on August 5, 2009.)

Based on our interagency discussions and the attached documentation, EPA concurs with FHWA's assertion that Alternative 5 with a no-access buffer (in accordance with the attached terms) is the alternative most likely to contain the LEDPA. The intent of the no-access buffer (as indicated in the attached correspondence and map) is to preclude access to the proposed parkway, either by interchanges or other means, in the central segment of the parkway. We believe that limiting access in this manner will limit the project's induced growth impacts on aquatic resources. Should this project continue to Tier 2, project-level analysis, the no-access buffer concept must be included as a component of the project description for any future alignment in the Alternative 5 Corridor, as this concept is integral to our agencies determination of this corridor as being "most likely to contain the LEDPA."

EPA also concurs with the Mitigation Framework presented by FHWA in its September 3, 2009 correspondence. This framework will guide the conceptual mitigation plan prepared during the Tier 2 environmental review process and the final mitigation plan for the future project. EPA will be available to work with the NEPA/404 agencies to discuss future mitigation opportunities.

The next step in the modified NEPA/404 MOU process is review of the Tier 1 Final Environmental Impact Statement (FEIS). Once the Tier 1 environmental review process is complete, FHWA, Caltrans, and SPRTA may initiate the Tier 2, project-level

environmental review process. EPA will use the information collected during the Tier 1 process, specifically at the concurrence points, to guide Tier 2 project review.

EPA will provide comments on the Tier 1 FEIS pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508), and Section 309 of the Clean Air Act. Our review of the FEIS will consider issues we raised in our comments on both the DEIS, and the Partially Revised DEIS, which we reviewed in March 2009.

Thank you for the opportunity to provide these comments. If you have any questions, please contact Connell Dunning (415-947-4161 or dunning.connell@epa.gov) or Carolyn Mulvihill (415-947-3554 or mulvihill.carolyn@epa.gov) of my staff, or Jason Brush of EPA's Wetlands Regulatory Office (415-972-3483 or brush.jason@epa.gov).

Sincerely,

For


Kathleen M. Goforth, Manager
Environmental Review Office (CED-2)

cc: Celia McAdam, South Placer Regional Transportation Authority
Katrina Pierce, California Department of Transportation
Nancy Haley, U.S. Army Corps of Engineers
Ken Sanchez, U.S. Fish and Wildlife Service
John Baker, National Marine Fisheries Service
Jeff Finn, California Department of Fish and Game
Loren Clark, Placer County Planning Department
Mike McKeever, Sacramento Area Council of Governments

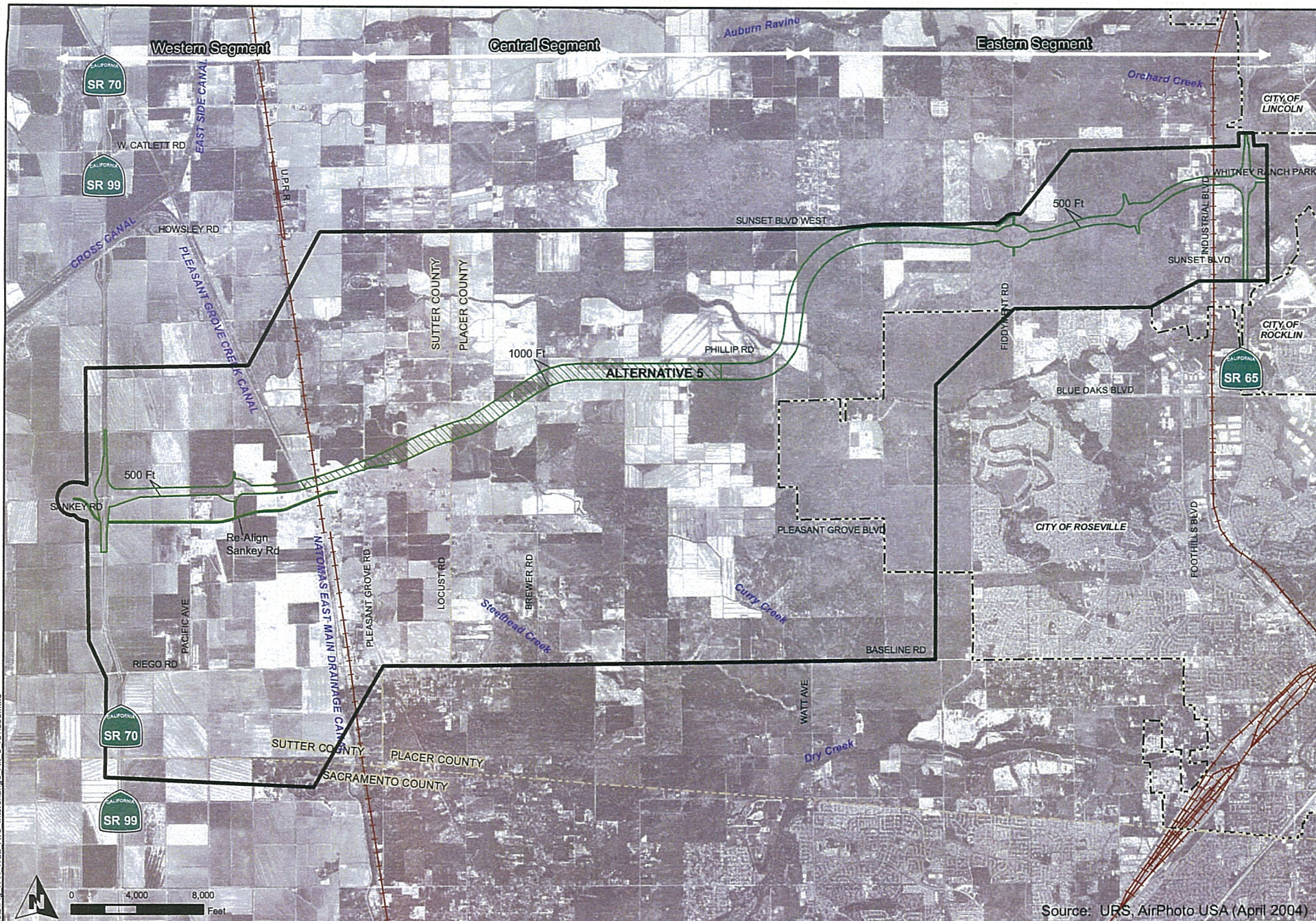
Attachments

1. Terms of a No-Access Easement for the Buffer Area Adjacent to Placer Parkway (August 5, 2009)
2. Map - Alternative 5 – Corridor Most Likely to Contain the LEDPA (August 2009)
3. Response to Erin Foresman Feedback (July 7, 2009)
4. Transportation Agencies CE Responses to July 2009 Resources Agencies' Feedback (July 31, 2009)
5. Placer Parkway Corridor Preservation Tier 1 EIS/EIR Final Meeting Notes (August 5, 2009)

Terms of a No-Access Easement for the Buffer Area Adjacent to Placer Parkway
(August 5, 2009)

The following briefly outlines the attributes of an easement that could be used as a vehicle to preclude interchanges along proposed alternative 5 for the proposed Placer Parkway from 3,250 feet west of the western boundary of the Reason Farms Retention Basin panhandle to the Natomas East Main Drainage Canal, as shown on the attached figure.

- The easement will be in the form of a conservation easement created pursuant to California Civil Code Section 815.
- The easement will be perpetual in duration. The no-access provision will be binding on successive owners for the purpose of retaining the land predominantly in its natural, scenic, historical, agricultural, forested or open-space condition. (Cal. Civ. Code §§815.1, 815.2.)
- Instrument creating the conservation easement will be recorded in the county where the land is located. (Cal. Civ. Code §815.5.)
- The easement will be held by a tax-exempt nonprofit organization qualified under Section 501(c)(3) of the Internal Revenue Code and qualified to do business in California which has as its primary purpose the preservation, protection, or enhancement of land in its natural, scenic, historical, agricultural, forested, or open-space condition or use.
- If the easement will not be accepted by such non-profit organization, or if the organization is no longer able to hold the easement, the first priority shall be to convey it to a federal agency or to a state government entity such as the California Department of Fish and Game. Failing that, the NEPA/404 agencies will work together through the NEPA/404 process to identify and to concur on an acceptable conservation easement holder.
- The terms of the easement may be enforced in court, and violation of the easement may result in damages, including the cost of restoration.
- Under Subdivision Map Act, city or county must generally deny approval of a tentative map if the land is subject to an open-space easement, agricultural conservation easement, or conservation easement.
- Easement will include Grantor's covenant not to allow access to right of way from adjacent land, and not to participate in planning or construction of interchange(s) between highway project and any surface streets from 3,250 feet west of the western boundary of the Reason Farms Retention Basin panhandle to the Natomas East Main Drainage Canal. Easement to expressly provide that covenant is specifically enforceable. May also identify certain third party beneficiaries with right to enforce covenant.
- The covenant not to allow access will include a specific prohibition regarding interchange structures in the airspace over the property.



Source: URS, AirPhoto USA (April 2004)

- Study Area Boundary
- Multiple Easements
- City Boundary
- County Boundary



Tier 1 EIS/EIR

Alternative 5 - Corridor Most Likely to Contain the LEDPA

August 2009

* Note: Watt Ave Interchange is not part of project and may be constructed in the future by others.